

***United States Court of Appeals  
for the Second Circuit***



**APPENDIX**





76-1370

IN THE  
UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

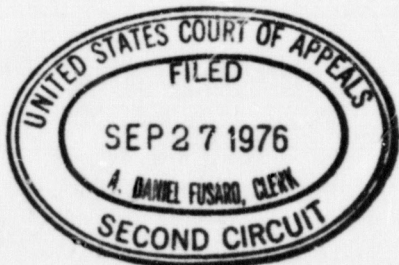
DOCKET NO. 76-1370

UNITED STATES OF AMERICA,  
APPELLEE,  
V.  
DAVID LEE WHITE,  
APPELLANT.

APPENDIX TO BRIEF OF APPELLANT  
DAVID LEE WHITE

ANDREW B. BOWMAN  
CHIEF FEDERAL PUBLIC DEFENDER

PETER D. GOLDBERGER  
ASSISTANT FEDERAL PUBLIC DEFENDER  
770 CHAPEL STREET  
NEW HAVEN, CONNECTICUT 06510  
ATTORNEYS FOR APPELLANT



PAGINATION AS IN ORIGINAL COPY



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U.S. CODE SECTION  
18:751(a)

CRIMINAL CASES  
escape from custody

COUNT  
1

U.S. Attorney or Asst.  
Peter C. Dorsey  
Peter A. Clark

Defendant  
Gregory B. Craig  
770 Chapel Street  
New Haven, Conn.

MAGR. CASE NO.

BAIL • RELEASE  
☐ Personal Rec.  
☐ Unsecured Bu.  
☐ Conditional Release  
Set (000)  
\$  
date  
☐ Bail Not Made  
☐ Bail Status Changed (See Docket)  
☐ 10% Det.  
☐ Surety  
☐ Collateral  
☐ 3rd Party Custody  
☐ PSA

ARREST  
2/9/76 or U.S. Custody Began on Above Charges  
☐ High Risk Defn. & Date Design'd

INDICTMENT  
Information ☐  
12/2/75  
Waived ☐  
Superseding Indict/Info ☐  
1/1/76

ARRAIGNMENT  
2/9/76  
1st Plea  
Final Plea

TRIAL  
Trial Set For  
Voor Date  
5/24/76  
Trial Begin  
6/10/76  
Trial Ended  
6/11/76

SENTENCE  
Disposition  
6/11/76  
7/15/76  
☒ Convicted  
☐ Acquitted  
☐ Dismissed  
☐ Notified/Discontinued

Search Warrant	Issued	DATE	INITIAL/No.	INITIAL APPEARANCE	INITIAL/No.	OUTCOME
Summons	Return			PRELIMINARY EXAMINATION OR REMOVAL HEARING Date Scheduled Date Held <input type="checkbox"/> Intervening Indictment		BOND <input type="checkbox"/> Exonerated <input type="checkbox"/> To Transfer District
	Served					
Arrest Warrant				<input type="checkbox"/> Waived <input type="checkbox"/> Not Waived		<input type="checkbox"/> Held for District GJ <input type="checkbox"/> Held to Answer to U. S. District Court
COMPLAINT				Tape No.	INITIAL/No.	AT: Magistrate's Initials
OFFENSE (In Complaint)						

Show last names and suffix numbers of other defendants on same indictment/information		V. Excludable Delay		
DATE	PROCEEDINGS	(a)	(b)	(c)
12/2/75	Indictment returned at New Haven and filed. Bench Warrant may issue and lodge as detainer. Zampano, J. m-12/3/75			
12/3/75	Bench Warrant issued and handed to U.S. Marshal for service.			
1976				
1/21	Application for Writ of H.C. ad Prosequendum, filed by govt. and allowed. Zampano, J. m-1/21/76. two cert. copies handed to U.S. Marshal for service.			
1/26	PLEA: Over.. Zampano, J. m-1/26/76.			
2/9/76	PLEA: Plea of not guilty entered to Count 1. Govt. Motion for bond of \$5,000 with surety. Bond set by Court \$5,000. with surety, w/o prejudice to deft for Motion to Reduce. Trial to be set at time convenient to the deft. Zampano, J. m-2/9/76.			
2/10/76	CJA Form D appointing the Federal Public Defender to represent the defendant, filed. Newman, J. m-2/10/76. copies mailed to Attys. Clark and Craig.			
2/13/76	Notice of Readiness, filed by govt.			



DATE	IV. PROCEEDINGS (continued)	V. EXCLUDABLE DELAY			
		(a)	(b)	(c)	(d)
2/10/76	Court Reporter's Notes of Proceedings held on 1/26/76, (Plea), filed. Russell, R.				
" "	Court Reporter's Notes of Proceedings held on 2/9/76 (Plea), filed. Russell, R.				
3/2/76	Hearing on Govt. Motion for continuance. Motion granted. Court grant's Marshal's request to transfer defendant to Springfield, Mo. for proper medical care Zampano, J. m-3/3/76.				
4/26/76	Court Reporter's Notes of Proceedings (hearing) held on Mar. 2, 1976, filed. Gale, R.				
4/27/76	Court Reporter's Sound Recording of Proceedings held on 1/26 and 2/9/76 (PLEA), filed. Russell, R.				
5/5/76	Supercedas Indictment returned and filed. No process to issue. Deft. currently in Springfield and case assigned for trial before Judge Murphy on 5/20/76. Zampano, J. 5/6/76.				
5/20/76	On TFM's Jury Assignment List: Counsel awaiting medical report on deft. Jury selection on Mon. May 24, 1976. Tentative trial June 10, 1976. Murphy, J. m-5/20/76.				
5/24/76	On TFM's Jury List: Jury impanelled. Murphy, J. m-5/25/76				
5/24/76	JURY TRIAL COMMENCES: Plea of not guilty entered to Count one of the supercedas Indictment. Deft's Proposed Jury Questions, filed. 12:15 P.M. Court describes the case to the jury. one juror excused for cause. Govt. allowed six challenges and deft. allowed ten challenges. Twelve jurors sworn and impanelled. Testimony to begin on June 10, 1976, Jurors remain for further selection. Murphy, J. m-5/25/76.				
5/25	CHANGE OF PLEA: Counsel for deft. states for the record the agreement reached between the govt and deft. Court declines to accept the agreement and the case will proceed to trial. Murphy, J. m-5/26/76.				
6/3/76	Application for Writ of Habeas Corpus Ad Testificandum, filed by govt. and allowed. Newman, J. m-6/4/76. Two cert. copies handed to U.S. Marshal for service.				
6/7/76	Marshal's return showing service, filed: Subpoena to testify, and Subpoena to Produce (2).				
6/7	Application for Writ of H. C. ad Testificandum, filed by govt. and allowed. Newman, J. m-6/7/76. Two cert. copies handed to U.S. Marshal.				
6/10	JURY TRIAL CONTINUES: Govt's Request to charge, filed. Deft. White's Request to Charge, filed. Jencks material 3501-3506, marked for ID. Court and counsel in chambers 10:12 A.M. to 10:16 A.M.				
		(a)	(b)	(c)	(d)
		Interval	Start Date	Ltr.	Total

DATE	PROCEEDINGS (continued) (Document No.)	V. EXCLUDABLE DELA			
		(a)	(b)	(c)	(d)
6/10	10:16 A.M. 12 jurors present. Two govt. witnesses sworn and testified. Govt Exs. 1 thru 3, filed. In the absence of the jury, Deft. moves pursuant to 3501 re statement of Deft. to witness Simmons. One govt witness Sworn and testified. Govt. makes offer of Proof. Court finds that statement was given voluntarily. Jury returns 3 Govt. witnesses sworn and testified. Govt. Ex 4A thru 4C filed. Deft. Ex. B, marked for ID. Govt. rests at 11:28 A.M.. In absence of the jury Deft. moves for Judgment of Acquittal-denied. 11:36 A.M. Jury returns. Deft. sworn and testified on his own behalf. Deft. Ex. C, filed. Stipulation read to Jury. Deft. rests at 2:36 P. M. In the absence of the jury Deft. moves to suppress the testimony of Rita Gonzalez. Two Govt. rebuttal witness sworn and testified. Govt. makes Offer of Proof. Deft's motion denied. Jury returns. Three govt. rebuttal witness testify. Govt. rest in rebuttal at 3:07 P.M. Deft. rests. In absence of jury Deft. moves for Judgment of Acquittal-denied. Court rules on request to charge. Summations: Govt. 3:22 to 3:32 P.M. Deft. 3:32 to 3:46 P.M. Govt. rebuttal 3:46 P.M. to 3:51 P.M.. Jury excused at 3:51 P.M. until 9:30 A.M. of 6/11/76. 3:52 P.M. Court adjourned until 9:30 A.M. of 6/11/76. Murphy, J. m-6/11/76.				
6/11/76	JURY TRIAL CONTINUES: 9:32 A.M. 12 jurors present. Court charges jury 9:32 A.M. to 9:50 A.M. Exceptions to charge noted in chambers by deft. Court gives further charge to jury 9:55 A.M. to 9:56 A.M. 9:56 A.M. Jury retires to jury room. All full exhibits and Indictment handed to Marshal and delivered to jury and deliberations begin at 9:57 A.M.. 1:05 P.M. Jury returns to Courtroom with verdict of guilty. Jury polled at request of deft. Verdict verified and ordered recorded. 1:10 P.M. Jury excused. On Motion of Govt. deft is remanded to custody of Marshal until sentence. Court Ex. 1 marked. Court adjourned at 1:12 P.M. Murphy, J. m-6/14/76.				
6/14/76	Marshal's return showing service, filed: Subpoena ticket.				
6/15/76	Motion for Judgment of Acquittal or in the Alternative for a New Trial, filed by deft.				



UNITED STATES DISTRICT COURT  
CRIMINAL DOCKET

DATE 1976	PROCEEDINGS (continued) (Document No.)	V. EXCLUDABLE DELAY			
		(a)	(b)	(c)	(d)
6/17	Memorandum, filed and entered. Murphy, J. m-6/17/76. Deft's Motion for Judgment of Acquittal or in the alternative for a new trial is denied. copies mailed to Attys Cuthbertson and Bowman.				
6/21/76	Marshal's return showing service, filed: Subpoena ticket.				
6/21/76	Marshal's return showing service, filed: Subpoena to Produce.				
6/21/76	Marshal's non est return, filed. Subpoena to Produce.				
7/7/76	DISPOSITION: Recess taken to ascertain the availability of deft. Over to July 19, 1976. Murphy, J. m-7/7/76.				
7/7/76	Marshal's return showing service, filed: Writ of H. C.				
7/15/76	DISPOSITION: Imprisonment for 2 years. Court recommends commitment to F.C.I. Springfield, Missouri. Deft. advised of his right to appeal and right to Appeal in forma pauperis. Notice of Appeal, filed by deft. Murphy, J. m-7/15/76.				
" "	Judgment and Commitment, filed and entered. Murphy, J. m-7/15/76.				
7/16/76	Certified copies of the Notice of Appeal and docket entries mailed to Clerk, U.S.C.A.				
7/16/76	CJA Form 21 authorizing transcript of trial, filed. Murphy, J. copies distributed.				
7/23	Order for Dismissal of the Indictment returned on Dec. 12, 1975, filed by govt. and leave of Court is granted. Zampano, J. m-7/26/76 copies mailed to counsel.				
8/4	Marshal's return showing service, filed: Warrant of Arrest.				
8/6	JS-3 mailed to A.O.				
8/16	Court Reporter's Transcript of proceedings held on June 10, 11, 1976 (Trial), filed. (Beecher, R.)				
8/4	Record on Appeal sent U.S.Ct. of Appeals. Copies of Index and docket sent counsel.				
8/16	CJA 21 approving payment of \$376.50 to Carol Beecher, Court Reporter, filed. Murphy, J. copies distributed.				
8/23	Copy of Scheduling Order from U.S.C.A., filed and entered. Fusaro, C. m-8/23/76.				
8/24	Receipt for Record on Appeal received from U.S.C.A. and filed.				

UNITED STATES DISTRICT COURT  
CRIMINAL DOCKET

U. S. vs

WHITE, DAVID LEE

76 N-75-174 1

Yr. Docket No. Def.

DATE	PROCEEDINGS (continued)	V. EXCLUDABLE DELAY			
		(a)	(b)	(c)	(d)
1976	(Document No.)				
8/5	Supplement to Record on Appeal sent U.S. Court of Appeals. Copies of Clerk's Certificate sent counsel.				
8/27	Receipt for the Supplement to Record on Appeal received from the U.S.C.A and filed.				
8/31/	Motion to Release Evidence, filed by govt.				
9/7	Deft's Objection to Release of Photographs, filed.				
9/7	Motion to Release Certain Evidence endorsed: Motion granted. Murphy, J. m-9/7/76. copies mailed to counsel.				
9/7	Marshal's return showing service, filed: Writ of H. C. ad Testificandum.				



UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

FILED

MAY 5 3 34 PM '76

UNITED STATES OF AMERICA

:

V.

:

CRIMINAL NO.: N-75-174

U.S. DISTRICT COURT  
D. DISTRICT OF CONNECTICUT

DAVID LEE WHITE

:

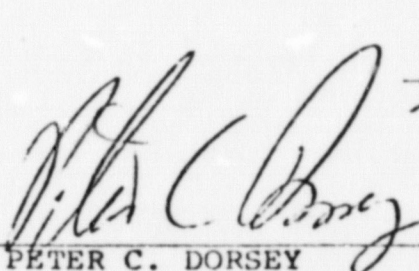
I N D I C T M E N T

THE GRAND JURY CHARGES:

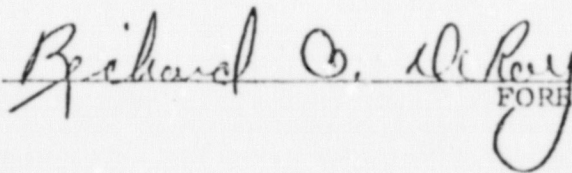
ONE COUNT

On or about September 26, 1975, at Danbury in the District of Connecticut, DAVID LEE WHITE, the defendant herein, having been lawfully committed on October 5, 1973 to the custody of the Attorney General, by virtue of a Judgment and Commitment of the U. S. District Court for the Western District of Pennsylvania, did unlawfully and wilfully escape from such custody, in violation of Title 18, United States Code, Section 751(a).

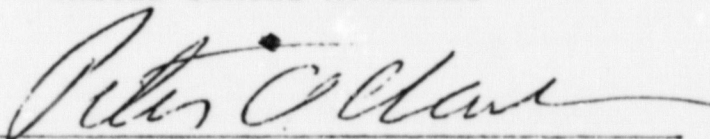
A TRUE BILL



PETER C. DORSEY  
UNITED STATES ATTORNEY



FOREMAN



PETER A. CLARK  
ASSISTANT UNITED STATES ATTORNEY

MICROFILM

United States District Court  
FOR THE  
DISTRICT OF CONNECTICUT

Sylvester

By:

Deputy Clerk

JUL 15 1976

NEW HAVEN United States of America

v.

DAVID LEE WHITE

No. N-75-174 Criminal

On this 15th day of July, 1976, came the attorney for the government and the defendant appeared in person and by counsel.

It IS ADJUDGED that the defendant upon his plea of not guilty and the jury having returned a verdict of guilty has been convicted of the offense of violation of Title 18, Section 751(a), of the United States Code (having been lawfully committed to the custody of the Attorney General, by virtue of a Judgment and Commitment of the U. S. District Court for the Western District of Pennsylvania, did unlawfully and wilfully escape from such custody)

as charged in Count One of the superseding Indictment

~~AS CHARGED~~

and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

It IS ADJUDGED that the defendant is guilty as charged and convicted.

It IS ADJUDGED that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of two (2) years on Count One.

It IS ORDERED that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

*John F. Murphy*  
United States District Judge.

The Court recommends commitment to: the Federal Correctional Center at Springfield, Missouri.

Clerk.

<sup>1</sup> Insert "by name of counsel, counsel" or "without counsel: the court advised the defendant of his rights to counsel and asked him whether he desired to have counsel appointed by the court, and the defendant thereupon stated that he waived the right to the assistance of counsel." <sup>2</sup> Insert (1) "guilty and the court being satisfied there is a factual basis for the plea," (2) "not guilty, and a verdict of guilty," (3) "not guilty, and a finding of guilty," or (4) "nolo contendere," as the case may be. <sup>3</sup> Insert "in count(s) number" if required. <sup>4</sup> Enter (1) sentence or sentences, specifying counts if any; (2) whether sentences are to run concurrently or consecutively and, if consecutively, when each term is to begin with reference to termination of preceding term or to any other outstanding unserved sentence; (3) whether defendant is to be further imprisoned until payment of the fine or fine and costs, or until he is otherwise discharged as provided by law. <sup>5</sup> Enter any order with respect to suspension and probation. <sup>6</sup> For use of Court wishing to recommend a particular institution.



1 Q And what did you do after you were let off?

2 A Walked up to the Rainbow Lake.

3 Q And what did you do there?

4 A Just walked back into the woods, quite away,  
5 they walked back out, thinking things over, trying to get  
6 my own head straightened up, what I was going to do.

7 Q Then what happened?

8 A I come back down the highway, walked on the  
9 highway when I seen the officer.

10 Q Is that Mr. Simmons who testified here today?

11 A Yes.

12 Q Then what happened?

13 A When I seen him, he was parked beside the road  
14 talking to some other man, and I walked to his car and I  
15 identified myself, told him I escaped from the Federal  
16 Prison, gave my name and so on.

17 Q And that was it?

18 A (Witness nods head.)

19 THE COURT: You said you walked over to  
20 his car?

21 THE WITNESS: Yes, sir. I did.

22 THE COURT: And he was talking to somebody?

23 THE WITNESS: He was talking to somebody.  
24 I waited until the person he was talking to  
25 drove off.

1 THE COURT: Was the other person in uniform?

2 THE WITNESS: No, sir. It was a civilian.

3 THE COURT: Did you tell your lawyer this  
4 before?

5 THE WITNESS: Yes, sir. I have.

6 THE COURT: Really? So you walked over to  
7 this policeman and identified yourself?

8 THE WITNESS: Yes, sir. I walked over to  
9 him myself and identified myself.

10 THE COURT: Thank you.

11 BY MR. BOHMAN:

12 Q Where was Officer Simmons when you first saw him?

13 A Parked on the right-hand side of the road.

14 Q Across the street from you?

15 A No. He was on the same side of the street as I  
16 was, the entrance to that high school, whatever it was  
17 there.

18 Q Mr. White, at the time of this escape, how much  
19 time did you think you had to go in your prison sentence?

20 A A matter of about ninety-four days.

21 Q A little over three months; is that right?

22 A Yes, sir.

23 Q What did you base this expectation on?

24 A On the sentence computation sheet at the  
25 institution.



1 do it.

2 Why don't I call the jury in in about two  
3 or three minutes and let me pass on the requests.

4 MR. BOWMAN: Your Honor, I wonder if we  
5 could have a little more than two or three  
6 minutes. Maybe ten minutes for me to prepare.

7 THE COURT: Yes. If you want to sit at  
8 your desk and we will go over the requests.

9 MR. BOWMAN: Yes, your Honor.

10 THE COURT: With regard to the Government  
11 request, I will not charge 1 or 2. I will  
12 charge in substance 3; in substance, 4 and 5 in  
13 substance. I will charge on reasonable doubt.  
14 You have it entitled Possible Doubt.

15 And with regard to the defendant's request,  
16 I will charge in substance what you request in  
17 No. 1 and in 2, and in substance what you ask  
18 for in 3, and reasonable doubt I will use my  
19 own words which actually is a quote from Judge  
20 Friendly; and testimony on credibility which is  
21 what you have in mind for 4; and on impeachment  
22 generally of a witness, but I am not going to  
23 give it the way you have 6 in your request.  
24 I will charge that on the question of voluntari-  
25 ness that that is a question of fact for the

1 jury with regard to any alleged confession, and  
2 I will not charge your No. 7. I will cover your  
3 No. 8. I think I made a mistake on that. I  
4 will cover your 8 and 9 in one part where I will  
5 talk about the judge asking questions and ruling  
6 on evidence. But each lawyer has an exception  
7 for the failure of myself to charge as requested  
8 in your written instructions. Then, of course,  
9 you have an exception to any part of my charge  
10 as I give it. Supposing we have another five  
11 minutes. Is that all right?

12 MR. BOWMAN: Could I have ten, your Honor?

13 THE COURT: Take eight.

14 MR. BOWMAN: Thank you, your Honor.

15 (Whereupon, court recessed at 3:12 p.m. and  
16 reconvened at 3:22 p.m.)

17 (The jury entered the courtroom at this  
18 time.)

19 THE COURT: Ladies and gentlemen, I told  
20 the Marshal to tell you that we are just going  
21 to have the lawyers' summations now and then in  
22 the morning we will charge, and I was going to  
23 ask you to come in the morning at half past 9:00  
24 because I have a civil matter at 10:00. All  
25 right. Please.



(June 11, 1976, 9:35 a.m.)

(The jury entered the courtroom at this time.)

THE COURT: Ladies and gentlemen, I am sure that you will agree that this has been a comparatively short and interesting case, and we heard some -- I did anyway, some new things. I didn't know how far a body travels once it is hit with a bullet from a magnum, but we were told about that. You were also told about the good fortune one of the escapees had in not only trying to steal a car, but finding one with the key in it and then a little box of money, a hundred dollars.

But in any event, whether a case is short or long or dull or interesting, as long as it is a criminal case, it is important. It is always important to the defendant and important to the Government and the most important part is the part that you people are going to play because you are going to decide within a short while whether Mr. White is guilty or not guilty of the one crime of which he stands accused.

It is rather a simple issue. But the principal issue is whether Mr. White voluntarily

1 escaped from the prison here in Danbury on a  
2 certain date in last year, and you know, of  
3 course, that the burden is on the Government  
4 and the question is whether the Government has  
5 proved beyond a reasonable doubt that that is  
6 what he did.

7 Now, you will recall that when you were  
8 sworn as jurors, you told the clerk that you  
9 would well and truly try the issues joined and  
10 a true verdict render, and I'm sure you know that  
11 you can't do that if you permit any kind of  
12 passion or emotion to enter into your thinking  
13 or deliberations, and I suggest to you that you  
14 can resolve the issues in this case by doing  
15 it coldly and analytically, the same as you  
16 would handle an important problem at home or in  
17 business. I'm sure you know that once you start  
18 deciding things by emotion, you usually decide  
19 them wrongly, but if you do it by applying your  
20 own good, God-given common sense and your  
21 experience at home and in business, then I am  
22 sure that a true verdict will be rendered, and  
23 that is all anybody asks for or anybody is  
24 entitled to.

25 One of your obligations is to accept the law



1 as I give it to you as applied to the facts  
2 in this case and not apply your own concept  
3 of what the law is or what it should be. And  
4 on the other hand, you are the sole and  
5 exclusive judges of the credibility of the  
6 witness, and your recollection alone controls  
7 as to what the testimony in the case was. It  
8 isn't my recollection or the lawyers, but yours  
9 alone.

10 Now, you have been told that Mr. White has  
11 been accused in an indictment. Now, an indict-  
12 ment is only an accusation. It is the physical  
13 means by which a defendant is brought to trial,  
14 and its sole purpose is to identify the  
15 defendant's alleged offense. It is not evidence  
16 that the offense charged was committed, and it  
17 may not be considered by you the jury as  
18 evidence during your jury deliberations. To  
19 that accusation the defendant has previously  
20 pleaded not guilty, and under our law when a  
21 person is accused of a crime, he is presumed  
22 to be innocent from the moment the accusation  
23 is laid against him, and that presumption  
24 continues from that moment on during the time  
25 it takes for a case to reach the trial level and

1 stays with him not only up to that time, but  
2 during the trial and also during the time when  
3 you are deliberating until such time, if it  
4 arrives, and you are satisfied that the  
5 Government has proved his guilt beyond a  
6 reasonable doubt.

7 Now, the indictment is very short, and I  
8 will read it. It says that "The Grand Jury  
9 charges one count, that on or about September  
10 26th, 1975 at Danbury in the District of  
11 Connecticut, David Lee White, the defendant  
12 herein, having been lawfully committed on  
13 October 5, 1973 to the custody of the Attorney  
14 General, by virtue of a judgment and commitment  
15 of the United States District Court for the  
16 Western District of Pennsylvania, did unlawfully  
17 and wilfully escape from said custody in  
18 violation of a certain statute."

19 Now, the essential elements of that offense  
20 which is charged in the indictment, each of  
21 which element the Government must prove beyond  
22 a reasonable doubt, are (1) that prior to  
23 September 26th, 1975 the defendant, Mr. White,  
24 had been convicted of an offense against the  
25 United States in the Federal Court in the Western



1 District of Pennsylvania. And secondly, that  
2 by virtue of such conviction and pursuant to  
3 the direction of the Attorney General of the  
4 United States the defendant was confined at the  
5 Federal Prison at Danbury, Connecticut and was  
6 in the custody of the officers and employees  
7 of that Federal Prison. And thirdly, that on  
8 or about September 26th, 1975 the defendant  
9 wilfully and unlawfully escaped from the custody  
10 of such Federal Prison at Danbury and its  
11 officers and employees.

12 If you find from the evidence that the  
13 Government has proved each of these elements  
14 beyond a reasonable doubt, then you may find  
15 the defendant guilty. If, however, you find  
16 that the Government has failed to prove all of  
17 these essential elements beyond a reasonable  
18 doubt, then you must find the defendant not  
19 guilty.

20 Now, even if you should find that the defen-  
21 dant White was initially forced by other prisoners  
22 to leave Federal custody, if he thereafter on  
23 his own volition decided to remain at large,  
24 this would constitute the crime of escape. And  
25 this is so because the voluntary failure to

1 return to custody would be proof of one of the  
2 elements of the offense, namely, the escape  
3 element.

4 In summary, an escape occurs when an  
5 individual voluntarily leaves his custody or  
6 when an individual fails to return to his  
7 custody when he has an opportunity.

8 Now, one of the exhibits that has been  
9 received in evidence is Exhibit 1. Now, I'm  
10 sure you know under our law there are three  
11 separate and independent branches. The Execu-  
12 tive branch, which the President heads up.  
13 The Legislative branch, which consists of the  
14 House of Representatives and the Senate. And  
15 the Judicial branch, which includes all the  
16 Federal judges and the justices of the Supreme  
17 Court. Now, the Legislature has passed laws  
18 which say in substance that Federal judges must  
19 commit Federal prisoners to the custody of the  
20 Attorney General and the Federal judges do not  
21 name the prison, but the Attorney General does.  
22 Now, it is in connection with the elements of  
23 the crime that I have described that I think I  
24 have to explain this Exhibit 1. It consists  
25 of three pages, and the first page is a



1 certificate. The Clerk of the Court down there  
2 in Pennsylvania, Mr. Schafflin, certifies in  
3 the first paragraph that there are attached true  
4 copies of documents that are among the records  
5 of his court, namely, Study Commitment and Final  
6 Sentence Commitment Execution. And then the  
7 Federal judge down there named Judge Schneider,  
8 he certifies that the clerk is the Clerk of the  
9 Court and that is his signature, and then the  
10 clerk in turn comes around in the last paragraph  
11 and certifies that the judge is the judge. So  
12 the certification then is the first page.

13 The second page is almost legible. Why  
14 the Government did this and offered it I have  
15 no idea, but there are some little things you  
16 can read and it's the little things that are  
17 going to be important because the whole paper  
18 by itself is not that important. I will explain  
19 later on,

20 Now, the last page is the commitment, and  
21 you can read that, and it says in substance that  
22 on a certain date in February, 1974, the defen-  
23 dant because of his plea of guilty to two  
24 different offenses, namely, the offense of  
25 wilfully hindering the administration of justice

1 in violation of a statute, and that is Count 1,  
2 and the wilfully injuring United States property  
3 in violation of another statute. And after that  
4 the judge says that it is adjudged that the  
5 defendant is hereby committed to the custody of  
6 the Attorney General or his authorized represen-  
7 tative for imprisonment for a period of three  
8 years under Count 2. Now, Count 2 is the  
9 wilfully injuring United States property, and  
10 that he shall become eligible for parole under  
11 another statute at such time as the Board of  
12 Parole may determine.

13 This sentence further provides for a period  
14 of three years of community supervision after  
15 his release. Count 1 is suspended.

16 I should tell you that with regard to the  
17 second page, the second document, under the  
18 Federal law there is a section that lawyers  
19 refer to as 4208(b) which Congress passed some  
20 years ago to help Federal judges make up their  
21 minds as to what kind of a sentence to impose  
22 when they have trouble making up their minds,  
23 and that section permits the judge (1) to impose  
24 the maximum sentence right away and then ask  
25 the Attorney General to make a study and report



1 back to him about this particular prisoner, and  
2 the study should not take more on the outside  
3 than six months, and then it provides that the  
4 Attorney General through the Bureau of Prisons  
5 make this study and send the report back to the  
6 judge with a recommendation, and then the judge  
7 has to bring the prisoner back and sentence him  
8 and he can do either, he can suspend the sentence  
9 or keep the original maximum sentence or he can  
10 reduce it, whatever he wishes. But the law  
11 provides that the commitment commences from the  
12 first day he was committed. In other words,  
13 the commitment date is the date when he first  
14 sends him off for study on the original maximum  
15 punishment.

16 Now, the reason I explain that is that you  
17 will note that the indictment charges that the  
18 defendant was committed on October 5, 1973 to  
19 the custody of the Attorney General, and I  
20 suggest that you look for that date in the paper  
21 that is not too legible. And although that is  
22 what is charged in the indictment, that date,  
23 the proof need not establish with certainty the  
24 exact date of the confinement. It is sufficient  
25 if the evidence in the case establishes beyond

1 a reasonable doubt that the commitment was a  
2 date reasonably near the date alleged.

3 And you will also note that the indictment  
4 uses the words "knowingly and intentionally".  
5 In other words, in describing the defendant's  
6 conduct it says that he must have knowingly and  
7 intentionally escaped. Now, an act is done  
8 intentionally when it is done with the specific  
9 intent to do that which the law forbids. That  
10 is to say, with a bad purpose either to disobey  
11 or disregard the law. And the purpose of adding  
12 the word "knowingly" was to insure that no one  
13 would be convicted because of an act done due  
14 to mistake or inadvertence or some other innocent  
15 reason.

16 Intention and knowledge of a defendant need  
17 not be proved by direct evidence, but like any  
18 other fact in the case, it may be established  
19 by circumstantial evidence. And since it is  
20 not possible to look into a man's mind to see  
21 what went on, you decide the issue of criminal  
22 intent from evidence and acts and conduct and  
23 circumstances and the reasonable inferences to  
24 be drawn therefrom. What a man does is often  
25 more indicative of his intent to commit an



1 offense rather than what he says.

2 Now, in determining Mr. White's guilt or  
3 innocence, you must not consider any statement  
4 or concession that he allegedly made unless  
5 such statement or concession was voluntarily  
6 made. Now, you will recall there was a man  
7 from Colorado, the police officer, Mr. Simmons,  
8 I think his name was, who told us what the  
9 defendant said to him at the time that he and  
10 the defendant talked on the road out in Frisco,  
11 Colorado. You must disregard any statement or  
12 confession entirely unless you yourselves by  
13 your own weighing of all of the evidence, your  
14 own judging of the credibility of the witnesses  
15 and your own reasonable deductions conclude that  
16 the statement or confession not only was made  
17 but was made voluntarily. And Congress has  
18 said that the jury shall give such weight to the  
19 confession as the jury feels it deserves under  
20 all of the circumstances. Now, as I indicated,  
21 there are two kinds of evidence which a jury  
22 may use to find a man guilty of a crime, and  
23 one is direct evidence such as the testimony of  
24 an eyewitness, and the other is circumstantial  
25 evidence, the proof of a chain of circumstances

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1 pointing to the commission of the offense. The  
2 law makes no distinction between direct and  
3 circumstantial evidence, but simply requires that  
4 before convicting a defendant the jury be  
5 satisfied of the defendant's guilt beyond a  
6 reasonable doubt from all of the evidence in the  
7 case.

8 Now, coercion or compulsion may be a legal  
9 defense for the crime charged in this case. In  
10 order, however, to prove a legal defense for  
11 any criminal conduct, the compulsion must be  
12 present and immediate and of such a nature as  
13 to induce a well-founded fear of impending death  
14 or serious bodily harm, and there must be no  
15 reasonable opportunity to escape the compulsion  
16 without committing the crime. If the evidence  
17 in this case should leave you with a reasonable  
18 doubt whether at the time and place of the  
19 alleged offense Mr. White acted willingly and  
20 voluntarily, that is to say, whether the accused  
21 was forced in effect to commit the crime  
22 charged in the indictment by coercion or compul-  
23 sion as I have explained, then you are duty  
24 bound and must acquit the defendant.  
25

Now, one of the issues, obviously, in the

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1 case is who is telling the truth? And the  
2 lawyers call that the issue of credibility.  
3 No one has yet come up with a slide rule or a  
4 mechanical device to determine where the truth  
5 lies. The Supreme Court has told us that there  
6 is no caliper for measuring truthfulness.  
7 Everybody agrees that you determine the truth  
8 by applying your own God-given common sense  
9 and your own experience at home and in business.  
10 You say to yourself: Did any witness have any  
11 reason for lying? Was he or she candid and  
12 honest? Was he or she interested in the result  
13 of the trial? Was his or her recollection as  
14 d as they said it was? And you determine  
15 all of these things I say by using your own  
16 common sense. And if you find that any witness  
17 testified falsely to a material fact, you are  
18 at liberty to disregard the testimony that you  
19 do not believe and you can accept what you  
20 believe or you can, if you wish, disregard that  
21 witness' testimony entirely.

22 Now, the defendant here has taken the  
23 stand in his own behalf. I am sure you know  
24 that under our system a defendant need not  
25 testify if he wishes. He is under no obligation

1 to prove anything. The obligation to prove his  
2 guilt is always on the Government throughout the  
3 trial. The defendant who testifies has a deep  
4 personal interest in the prosecution, and that  
5 interest should be considered by you. Interest,  
6 as you know, creates a motive for false testimony,  
7 and the greater the interest, the stronger the  
8 motive. Bear in mind I am not saying that  
9 because a person has an interest in the case  
10 that they are not capable of telling a straight-  
11 forward and truthful story because if that were  
12 so, no defendant would ever have a chance in a  
13 courtroom. You know as well as I do that it is  
14 possible and frequently happens that a person  
15 who has an interest can tell a straightforward  
16 and honest story. I repeat the question of  
17 credibility for each of the witnesses, including  
18 the defendant, is one that is in your entire  
19 control and your own responsibility.

20 Now, throughout my charge and the lawyers'  
21 summations we have all been using the phrase  
22 "reasonable doubt". It must be obvious to you  
23 that in all criminal cases the burden is on the  
24 Government to prove a defendant's guilt by what  
25 is called proof beyond a reasonable doubt, and



1 the burden, as I said, remains on the Government  
2 and never shifts to a defendant.

3 Now, what is reasonable doubt? It is a  
4 doubt based upon reason which arises from the  
5 evidence or lack of evidence. Reasonable doubt  
6 is not a vague or speculative or an imaginary  
7 doubt, but it is such a doubt as to cause a  
8 prudent man or woman to hesitate before acting  
in matters of importance to themselves.

10 Now, I had occasion on a number of occasions  
11 to interrupt and ask a question or two of a  
12 witness. I did this only for the purpose of  
13 clarification and to expedite matters. I did  
14 not intend to suggest by my questions that I  
15 had an opinion as to the guilt or innocence of  
16 the defendant. I have none. If I did I would  
17 be encroaching on your job.

18 I also had occasion to rule on questions of  
19 evidence and questions of law and sometimes  
20 sustaining objections, other times overruling  
21 them. Just forget those. Those are legal  
22 matters and it doesn't mean a blessed thing as  
23 far as you are concerned.

24 Now, under your oath as jurors, one of the  
5 things that you cannot do, assuming that you

1 do arrive at a verdict of guilt, is to consider  
2 or discuss the question of possible punishment.  
3 The question of punishment of a person who has  
4 been convicted of a crime belongs on the  
5 conscience of the court and on nobody else's  
6 conscience. We each have a job to do. The  
7 lawyers do theirs by presenting the evidence to  
8 the best of their ability. Your job is to decide  
9 the facts to the best of your ability, and my  
10 job is to run the court to the best of my  
11 ability, and in the event of a verdict of guilt,  
12 to impose sentence. So as I said, let us not  
13 encroach on each other's job.

14 And now one more word and I am done. If  
15 you find that the law has not been violated as  
16 charged, you should not hesitate for any reason  
17 to return a verdict of not guilty. On the  
18 other hand, if you find that the defendant has  
19 been proved guilty beyond a reasonable doubt,  
20 say so, and do not hesitate because of any  
21 emotion like sympathy or bias or prejudice.

22 I am sure you know that when you retire  
23 to your jury room, you will elect one of your  
24 own members as Foreman or Forelady, and he or  
25 she will preside over your deliberations and



1 will be your spokesman here in court, and I'm  
2 sure you know that your verdict must be  
3 unanimous.

4 Now, if you will excuse the lawyers and  
5 myself for a few minutes, I must talk to them  
6 in your absence. So, please.

7 (The following transpired in chambers.)

8 THE COURT: Does the Government have any  
9 exceptions?

10 MR. CUTHBERTSON: The Government is content,  
11 your Honor.

12 MR. BOWMAN: Yes, your Honor. First, I  
13 take exception to your Honor's comment in the  
14 beginning of the charge relating to the magnum,  
15 and I believe that unnecessarily will enflame  
16 the jury with respect to the evidence in this  
17 case.

18 THE COURT: God, I've heard of nit-picking,  
19 but that really wins. All right.

20 MR. BOWMAN: I say respectfully, your Honor.

21 THE COURT: It's all right.

22 MR. BOWMAN: Secondly, with respect to  
23 your Honor's charge on the essential elements,  
24 I heard the charge to be that if the Government  
25 fails to prove all the essential elements of the

1 crime beyond a reasonable doubt, then the jury  
2 should acquit. My understanding of the law is  
3 if the Government fails to prove any one of  
4 the essential elements, then the jury should  
5 acquit and I except to that.

6 THE COURT: I will tell the jury they have  
7 to prove each and every one.

8 MR. BOWMAN: Thank you, your Honor. With  
9 respect to interest, your Honor charged solely  
10 with respect to the defendant and not with  
11 respect to any of the other witnesses, more  
12 specifically, Mr. Frey and Mr. Carroll, and I  
13 believe that they also had an interest in coming  
14 here to testify.

15 THE COURT: You might believe it, but I  
16 charged what the Supreme Court said I can charge  
17 about the defendant. U.S. against Reagan.

18 MR. BOWMAN: And finally, your Honor, I  
19 do take exception to your Honor's interpretation  
20 based upon, of course, the Government's requested  
21 charge with respect to the voluntary failure to  
22 return being a violation of this statute.

23 THE COURT: Read U.S. against Chapman.  
24 Anybody else?

25 MR. CUTHBERTSON: No, your Honor.



1 (The following transpired in open court  
2 before the jury.)

3 THE COURT: One of the lawyers thought that  
4 I misspoke myself when I was explaining the  
5 various elements of the crime of escape, and  
6 he thought I said that if you find that the  
7 Government has failed to prove all of these  
8 essential elements beyond a reasonable doubt,  
9 then you must find the defendant not guilty.  
10 I did say that, and I think what I meant was that  
11 if you find that the Government has failed to  
12 prove any of these three elements beyond a  
13 reasonable doubt. In other words, the Govern-  
14 ment's obligation is to prove each and every  
15 one so that if they fail to prove one, you  
16 must acquit.

17 All right. You may now retire.

18 (The jury left the courtroom at 9:55 a.m.  
19 and court recessed.)

20 (Court reconvened at 1:07 p.m. and the jury  
21 returned to the courtroom.)

22 THE COURT: Mr. Rogers, you are the Foreman,  
23 are you?

24 MR. ROGERS: Yes, sir.

25 THE COURT: And your note says that you

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA :

V. : CRIM. NO. N-75-174

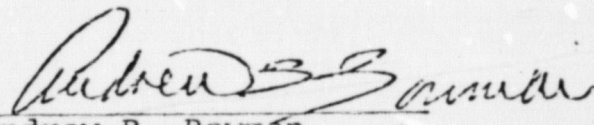
, DAVID WHITE :

DEFENDANT WHITE'S REQUEST TO CHARGE

The defendant, David White, respectfully submits the attached proposed instructions with the request that they be included in the Court's charge to the jury.

THE DEFENDANT  
DAVID WHITE

BY

  
Andrew B. Bowman  
Chief Federal Public Defender  
770 Chapel Street  
New Haven, Connecticut



# 1. Essential Elements

The burden of proof rests with the prosecution to prove each and every essential element of the crime charged beyond a reasonable doubt. The essential elements of the crime charged are:

## (1) Escape

Escape is defined as a voluntary departure from custody with the intent to avoid confinement.

(2) the escape must be from custody of an institution where the prisoner is confined by direction of the Attorney General.

(3) the custody must be pursuant to process issued under the laws of the United States by a court.

United States v. Nix, 501 F.2d 516, 519 (7th Cir. 1974)

United States v. McCray, 468 F.2d 446, <sup>418</sup>(8th Cir. 1972)

10

## 2. The Defense

The defendant has testified that he was coerced and compelled into leaving the federal correctional institution on September 26, 1975. He has sworn that he was in fear of present and immediate serious bodily injury from other inmates if he did not accompany them on their escape.

Coercion or compulsion may provide a legal excuse for the crime charged in the indictment. In order, however, to provide a legal excuse for any criminal conduct, the compulsion must be present, and immediate, and of such a nature as to induce a well-founded fear of impending death or serious bodily injury; and there must be no reasonable opportunity to escape the compulsion without committing the crime, or participating in the commission of the crime.

If the evidence in this case should leave you with a <sup>definitely</sup> reasonable doubt as to whether the defendant acted with intent to avoid confinement at the time and place of the escape because of coercion or compulsion, then you must acquit the defendant.

Federal Jury Practice and Instruction, Vol. 1 §13.14

See also Castle v. United States, 347 F.2d 492, 494 (CA DC 1965)



## 6. Eyewitness Testimony

All eyewitness testimony, whether the witness is identifying a defendant or a photograph, should be scrutinized with care and caution. This is especially true of witnesses whose opportunity for observation is limited and who may have observed individuals briefly or from a bad angle. Eyewitness testimony is often unreliable. When a witness identifies a photograph before he identifies the person in the flesh, an added risk is injected. Even if the police follow the most correct photographic identification procedures and show pictures of a number of individuals without indicating whom they suspect, there is danger that a witness may make an incorrect identification, and there is the further danger that the witness may retain in his mind's eye the image from the photograph rather than the image of the person that he saw committing the crime. This is not to say that you may not believe eyewitness identification testimony. But before you believe such testimony, you must carefully weigh the witness' ability to observe, the circumstances under which the observation was made, the consistency of the identification with any other identifications in the case and the inability of other witnesses in relatively the same position to make the same identification.

United States v. Jenkins, Transcript, p. 2406.

## 7. Identification from Photographs

It must be recognized that the use of photographs may sometimes cause witnesses to err in identifying criminals. A witness may have obtained only a brief glimpse of a criminal, or may have seen him under poor conditions. Even if the police follow the most correct photographic identification procedures and show him the pictures of a number of individuals without indicating who they suspect, there is some danger that the witness may make an incorrect identification. This danger will be increased if the police display to the witness only the picture of a single individual who generally resembles the person he saw, or if they show him the pictures of several persons among which the photograph of a single such individual recurs or is in some way emphasized. Regardless of how the initial misidentification comes about, the witness thereafter is apt to retain in his memory the image of the photograph rather than of the person actually seen, reducing the trustworthiness of subsequent line-up or courtroom identification.

This is not to say that such testimony concerning the use of photographs is to be disregarded by you, but I instruct you to appraise carefully such testimony balanced by the testimony revealed during the cross-examination of such witnesses.

Simmons v. United States, 390 U.S. 377-384 (1968)

United States v. Fernandez, 451 F.2d 638 (2d Cir. 1972)



9. Questioning by the Judge

During the course of a trial, I occasionally ask questions of a witness, in order to bring out facts not then fully covered in the testimony. Do not assume that I hold any opinion on the matters to which my questions may have related. Remember at all times that you, as jurors, are at liberty to disregard all comments of the Court in arriving at your own findings as to the facts.

Federal Jury Practice and Instruction, Vol. 1 §10.09